

4. Since January 2002, KH has served as class counsel in well over 40 class/collective actions in courts throughout the United States. Several of these actions are listed in Attachment A.

5. As indicated, in Attachment A, KH has litigated class/collective actions across the United States, including in California, Colorado, Illinois, Michigan, New York, Pennsylvania, and Ohio.

6. In addition to the class/collective actions described above, KH has successfully resolved well over 350 “individual” actions in which a single plaintiff (or a small group of named plaintiffs) alleged violations of federal or state wage laws.

7. Moreover, KH’s current case inventory includes over 125 unresolved actions that allege violations of federal or state wage/overtime laws. These active cases include both class/collective actions as well as individual actions.

Don Foty’s Experience in Wage and Hour Litigation

8. I graduated in 2003 from The University of Texas at Austin and in 2006 from the University of Houston Law Center. I have been a member of the Texas bar since 2006 and I am admitted in the following federal courts: the United States District Courts for the Northern, Southern, Eastern, and Western Districts of Texas; the United States District Courts for the Eastern District of Michigan; the United States District Court for the District of Colorado; the United States District Court for the Northern District of Illinois; the United States District Court for the District of North Dakota, and the United States Courts of Appeals for the Fifth Circuit.

9. Since 2006, I have handled through conclusion at least 200 civil actions in state and federal courts and have tried 9 cases to verdict. In addition, I have been recognized each year since 2012 as a “Rising Star” by my peers in the annual survey of Texas attorneys published by

Thompson Reuters. I am also listed as one of the top 40 lawyers under 40 by the National Trial Lawyers' Association and one of the top 100 employment lawyers in the country by the National Advocates. I have spoken before the Houston Bar Association on the Fair Labor Standards Act and I have served as a contributing author to the American Bar Association FLSA Midwinter Report in 2016, 2017, and 2018.

10. Additionally, since I became licensed as an attorney, I have regularly litigated unpaid overtime compensation and minimum wage claims, including claims involving employee misclassification, regular rate miscalculation, off-the-clock work, preparatory and concluding work, fluctuating workweek disputes, on-duty meal periods, and waiting time and travel time.

11. In summary, I have substantial expertise in class action and collective action litigation.

Qualifications and Experience of Attorneys, Paralegals, and Staff

12. **William Hogg, Associate Attorney:** Mr. Hogg graduated from Tulane Law School in 2013. Mr. Hogg has clerked for the U.S. Department of Justice, the Texas Attorney General, and has five years of experience in business litigation, regulatory compliance, and professional liability litigation. At Kennedy Hodges, Mr. Hogg represented Plaintiffs exclusively in wage and hour class action or collective action litigation across the country. Mr. Hogg is licensed in Texas and is a member of the National employment Lawyers Association, the American Association for Justice, the Houston Bar Association, the Texas Young Lawyers Association, and the Houston Trial Lawyers Association. Mr. Hogg served as an Associate Attorney on this case. Mr. Hogg's billing rate is \$350 per hour.

13. **Carl Fitz, Associate Attorney:** Mr. Fitz is licensed in Texas and admitted to practice before the United States District Court for the Southern District of Texas. Mr. Fitz was

active on academic journals during law school and was a judicial intern for the 14th Court of Appeals in Houston, Texas. Mr. Fitz worked as a law clerk with Kennedy Hodges, LLP on wage & hour matters in 2016 and accepted a full-time job with the firm in 2017. He has been licensed for less than a year, but exclusively works on wage and hour litigation representing Plaintiffs in class or collective actions. Mr. Fitz's billing rate is \$350 per hour.

14. **Ved Chitale, Associate Attorney:** Mr. Chitale is licensed in Texas and admitted to practice before the United States District Court for the Southern District of Texas. He has experience working for a small civil litigation firm, a civil rights law firm, and has clerked for the Texas Attorney General and interned at the 14th Court of Appeals in Houston, Texas. He has been licensed for a year, but exclusively works on wage and hour litigation representing Plaintiffs in class or collective actions. Mr. Chitale started working for Kennedy Hodges in 2018 and served as an Associate Attorney on this case. Mr. Chitale's billing rate is \$350 per hour.

15. **Mr. Jorge Garcia** – Mr. Garcia is an Associate for the Foley Law Firm. Most of Mr. Garcia's practice involves wage and hour law. His rate is \$250 per hour.

16. **Kim Black, Paralegal:** Mrs. Black is a veteran paralegal with over 20 years of experience, and she has worked on this case. Her billing rate is \$225 per hour.

17. **Marta Ponce, Paralegal:** Marta Ponce is the paralegal for lead attorney Don Foty and has 4 years of experience. Her billing rate is \$225 per hour.

18. **Gary Wohn, Office Manager:** Mr. Wohn is the office manager for Kennedy Hodges LLP and he has worked on this case from the beginning, handling a large variety of complex administrative matters. His billing rate is \$225 per hour.

19. The hourly rates charged by each partner, associate, paralegal, and staff above are the normal rates ordinarily charged for each in the relevant time period in this case and other cases at the firm.

Summary of Litigation Activities

20. Plaintiff's Counsel (the Foley Law Firm and Kennedy Hodges) spent more than one thousand hours and approximately \$400,000 in attorney's fees to develop, prosecute, and resolve this case. Since this lawsuit was filed, (i) Plaintiffs' Counsel deposed 6 witnesses, (ii) drafted and served 38 interrogatories, (iii) drafted and served 132 requests for admission, (iv) drafted and issued 232 requests for production, (v) drafted and served a third party subpoena to the IRS, (vi) drafted and served third party subpoenas to three welding contractors, (vii) produced approximately 2,000 pages of records, (viii) responded to requests for production and interrogatories for 15 Plaintiffs, and (ix) reviewed 7,000 pages of records produced by the Defendants.

A. Motions, including Plaintiff's Motions for Representative Discovery and Motion to Quash Third Party Subpoena

21. Soon after Plaintiff filed this lawsuit, Defendants engaged in significant written discovery and motion practice. In February 2018, Plaintiffs sought a protective order as Defendants had issued written discovery to every class member in this case, (Doc. 76), which the Court granted. (Doc. 82). The Court held that discovery in this matter should be conducted on a representative basis. Afterwards, Plaintiffs were forced to file a motion to quash Defendants' third party subpoenas, (Doc. 98), which the Court again granted. (Doc. 102).

B. Depositions Discovery.

22. After the Court granted the Plaintiffs' Motion for Representative Discovery, the Parties began depositions.

23. Plaintiffs' Counsel deposed the following individuals:

- a. Kera Zamora, May 2, 2018;
- b. Daniel Sims, May 3, 2018;
- c. Michael McClanahan, May 9, 2018;
- d. Rule 30(b)(6) Deposition of Ensign United States Drilling (SW) Inc., and Danny Patterson, May 16, 2018;
- e. Tes Lawal, May 22, 2018;
- f. Rule 30(b)(6) Deposition of OFS Global, Inc., and Wayne Hanson, May 23, 2018.

24. Most of these depositions lasted longer than five hours, including breaks. These depositions required extensive preparation, including the review and analysis of thousands of pages of documents, emails, pay records, and policies/procedures of Defendants. This review was necessary to gather information regarding how Defendants conducted business, the job requirements of the welder position, the extent of control exercised by Defendants over Plaintiffs, the actions of the supervisors regarding Plaintiffs, and how the welders were managed by Defendants.

C. Mediation

25. The Parties attended a full day of mediation on May 24, 2018 with Bill Lemmons, a mediator experienced in FLSA actions. Prior to attending mediation, Defendants produced data containing the dates of employment, hours worked, and pay for the Plaintiffs. Plaintiffs then used this data to compute a damage model for the entire Class. This damage model was discussed at length during mediation. At mediation, the Parties disagreed sharply over liability and damages.

D. Settlement Negotiations.

26. After mediation, the Parties engaged in further discovery. Plaintiffs issued authorizations to the IRS for the production of their tax returns and later a subpoena to the IRS. Additionally, both sides gathered declarations regarding their document production efforts and supplemented written discovery to produced thousands of additional records.

27. After continuing to conduct discovery, the Parties were finally able to reach a settlement in September 2018.

Time Spent on this Litigation

28. KH utilizes a small team of attorneys at any one time in order to minimize duplication of efforts and maximize billing judgment. KH also made every effort to have work performed by the attorney or paralegal with the lowest hourly rate who was able to perform the work effectively. The hours reported are reasonable for a case of this complexity and size and were compiled from contemporaneous time records maintained by each attorney, paralegal, and support staff person participating in this case.

NAME	EXPERIENCE	HOURS	RATE	TOTAL
Taft Foley	15 Years	250.75	\$500	\$125,375
Don Foty	12 Years	231.25	\$500	\$115,625
Jorge Garcia	1 Year	120	\$250	\$30,000
Ved Chitale	1 Year	211.1	\$350	\$73,885
Carl Fitz	1 Year	12.416	\$350	\$4,345.83

William Hogg	5 years	5.5	\$350	\$1,925
Marta Ponce	4 Years	107.75	\$225	\$24,243.75
Kim Black	20 Years	5.3	\$225	\$1,192.50
Gary Wohn	20 Years	17.216	\$225	\$3,873.75
Ingrid Breton	6 years	48.5	\$90	\$4,365
Cristina Washington	3 years	27.5	\$90	\$2,475
Caridad Tanner	4 years	10.5	\$90	\$945
KH Law Clerk	3L	26.367	\$150	\$3,955
TOTAL		1,074.15		\$392,205.83

29. Based upon my experience, the rates charged by the Partners, Associates, paralegals, clerks, and staff in this case are customary in the Southern District of Texas.

Attorney's Fees Sought Are Fair and Reasonable

30. To date, KH has worked without compensation of any kind on this case and the fee has been wholly contingent upon the result achieved. We undertook to prosecute this action without any assurance of payment for our services. Wage and hour cases of this type are, by their very nature, complicated and time-consuming. Lawyers undertaking representation of large numbers of affected employees in wage and hour actions inevitably must be prepared to make tremendous investment in time, energy, and resources. Due also to the contingent nature of the customary fee agreement, lawyers are asked to be prepared to make this investment with the very

real possibility of an unsuccessful outcome and no fee of any kind. KH stood to gain nothing in the event the case was unsuccessful.

31. As noted above, this litigation was hard fought. Defendants denied liability and that the Plaintiffs were owed any money from the beginning of this case.

32. The requested attorneys' fees are based on the terms of the settlement and were arrived at through arm's length negotiations.

Litigation Expenses Sought are Fair and Reasonable

33. KH has incurred \$30,774 in out-of-pocket costs prosecuting this litigation. These costs were incidental and necessary to the prosecution of this lawsuit and include costs of depositions, document printing fees, mediation fees, court fees, and other necessary expenses.

DATE: November 12, 2018

/s/ Don Foty
Don J. Foty
dfoty@kennedyhodes.com
Texas Bar No. 24050022
Kennedy Hodges, LLP
4409 Montrose Blvd, Suite 200
Houston, Texas 77006
Tel: (713) 523-0001
Fax: (713) 523-1116
Attorney for Plaintiffs